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No. 81-1040

In the Supreme Court of the United States

OCTOBER TERM, 1981

FELIX S. JACOB, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that a warrant to search his office was an impermissible general warrant.[1]

Petitioner waived indictment and was charged in an information returned in the United States District Court for the District of Maryland with subscribing to a false income tax return, in violation of 26 U.S.C. 7206(1). The district court suppressed documents seized from petitioner's office under a search warrant on the ground that the warrant lacked specificity and therefore constituted a general warrant violative of the Fourth Amendment. 502 F. Supp. 1221. The court of appeals reversed (Pet. Supp. App.).

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[1]Petitioner also presents (Pet. i) the manifestly frivolous contention that jeopardy attached at the commencement of the suppression hearing in his case, and that double jeopardy therefore barred the government's appeal to the court of appeals from the grant of his motion.

Petitioner contends (Pet. 5-7) that the court of appeals erred in reversing the district court's order suppressing the evidence. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to suppress the evidence. If petitioner is acquitted following a trial on the merits, his claims will be moot. If, on the other hand, petitioner is convicted, he will then be able to present these claims to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time. See, *e.g.*, *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327 (1967); *American Construction Co.* v. *Jacksonville, Tampa & Key West Ry.*, 148 U.S. 372, 384-388 (1893); see *Hamilton Shoe Co.* v. *Wolf Brothers*, 240 U.S. 251, 257-258 (1916).[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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[2]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.